



House of Representatives

File No. 752

General Assembly

February Session, 2014

(Reprint of File No. 406)

Substitute House Bill No. 5408
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 3, 2014

AN ACT CONCERNING TREE TRIMMING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 16-32h of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective from*
3 *passage*):

4 (c) The authority shall, in the docket initiated pursuant to subsection
5 (b) of this section, review:

6 (1) Each such utility's current practices concerning service
7 restoration after an emergency. Such review shall include, but not be
8 limited to, an analysis of each such utility's (A) estimates concerning
9 potential damage and service outages prior to any emergency, (B)
10 damage and service outage assessments after any emergency, (C)
11 restoration management after any emergency, including access to
12 alternate restoration resources via regional and reciprocal aid
13 contracts, (D) planning for at-risk and vulnerable customers, (E)
14 policies concerning communication with state and local officials and
15 customers, including individual customer restoration estimates and

16 the timeliness and usefulness of such estimates, and (F) need for
17 mutual assistance during any emergency;

18 (2) The adequacy of each such utility's infrastructure, facilities and
19 equipment, which shall include, but not be limited to, an analysis of
20 (A) whether such utility is following standard industry practice
21 concerning operation and maintenance of such infrastructure, facilities
22 and equipment, and (B) whether such utility had access to adequate
23 replacement equipment for such infrastructure, facilities and
24 equipment during the course of such emergency;

25 (3) Coordination efforts between each electric distribution company
26 and any telecommunications company, community antenna television
27 company, holder of a certificate of cable franchise authority or certified
28 competitive video service provider, as those terms are defined in
29 section 16-1, including coordinated planning before any emergency;

30 (4) Tree trimming policies of each electric distribution company and
31 shall determine (A) the amount spent by each electric distribution
32 company for tree trimming in each year since such company's most
33 recent rate case, (B) each such company's system average interruption
34 duration index, as described in section 16-245y, caused by falling trees
35 and limbs, (C) the impact of expanding the area adjacent to
36 distribution lines for tree trimming, including an analysis of the
37 benefits and the costs of such expansion to ratepayers and the
38 likelihood that such expansion would decrease damage to
39 infrastructure, facilities and equipment used to distribute electricity
40 and decrease service outage frequency or duration, (D) the percentage
41 of service outages during Tropical Storm Irene and the October, 2011
42 snowstorm caused by trees and limbs outside the current trim area
43 based on an analysis of the quantity and effectiveness of prior tree
44 trimming, and (E) the standards appropriate for road-side tree care in
45 the state, vegetation management practices in utility rights-of-way,
46 right tree-right place standards, and any other tree maintenance
47 standard recommended by the State Vegetation Management Task
48 Force established by the Department of Energy and Environmental

49 Protection; [and]

50 (5) The use of mediation in resolving objections to proposed
51 activities relating to vegetation management, as defined in section 16-
52 234, as amended by this act, and the circumstances in which stump
53 grinding may be performed within the utility protection zone, as
54 defined in section 16-234, as amended by this act, provided, the utility,
55 as defined in section 16-234, as amended by this act, shall recover all
56 reasonable incremental costs incurred by such utility pursuant to the
57 directives of the authority, as established pursuant to this subdivision,
58 through the non-bypassable federally mandated congestion charge, as
59 defined in subsection (a) of section 16-1; and

60 ~~[(5)]~~ (6) Any other policy, practice or information that the authority
61 determines is relevant to a review of each such utility's ability to
62 ensure the reliability of such utility's services in an emergency and to
63 prevent, minimize and restore any long-term service outages or
64 disruptions caused by such emergency.

65 Sec. 2. (NEW) (*Effective from passage*) On and after the effective date
66 of this section, the Department of Energy and Environmental
67 Protection shall review the vegetation management practices of each
68 electric distribution company. Not later than one year after the final
69 decision has been issued by the Public Utilities Regulatory Authority
70 for the docket described in subsection (c) of section 16-32h of the
71 general statutes, as amended by this act, and every two years
72 thereafter, the authority shall submit a report, in accordance with the
73 provisions of section 11-4a of the general statutes, to the joint standing
74 committee of the General Assembly having cognizance of matters
75 relating to energy. Such report shall include a review of the vegetation
76 management practices of each electric distribution company.

77 Sec. 3. Section 16-234 of the 2014 supplement to the general statutes
78 is repealed and the following is substituted in lieu thereof (*Effective*
79 *from passage*):

80 (a) As used in this section:

81 (1) "Utility" means a telephone, telecommunications, electric or
82 electric distribution company, each as defined in section 16-1;

83 (2) "Utility protection zone" means any rectangular area extending
84 horizontally for a distance of eight feet from any outermost electrical
85 conductor or wire installed from pole to pole and vertically from the
86 ground to the sky;

87 (3) "Hazardous tree" means any tree or part of a tree that is (A)
88 dead, (B) extensively decayed, or (C) structurally weak, which, if it
89 falls, would endanger utility infrastructure, facilities or equipment;

90 (4) "Vegetation management" means the retention of trees and
91 shrubs that are compatible with the utility infrastructure and the
92 pruning or removal of trees, shrubs or other vegetation that pose a risk
93 to the reliability of the utility infrastructure. [, and the retention of trees
94 and shrubs that are compatible with the utility infrastructure.] Until
95 such time as the Department of Energy and Environmental Protection
96 issues standards for identifying such compatible trees and shrubs, the
97 standards and identification of such compatible trees and shrubs shall
98 be as set forth in the 2012 final report of the State Vegetation
99 Management Task Force; [and]

100 (5) "Pruning" means the selective removal of plant parts to meet
101 specific utility infrastructure reliability goals and objectives, when
102 performed according to current professional tree care standards [.] and
103 in a manner that retains the structural integrity and health of the
104 vegetation;

105 (6) "Abutting property owner" means the owner of the property
106 abutting or adjacent to that portion of a public road, public highway or
107 public grounds where the tree or shrub that the utility proposes to
108 remove or prune is located; and

109 (7) "Private property owner" means the owner of the property
110 where a tree or shrub the utility proposes to remove or prune is
111 located, which may include municipally owned land.

112 (b) A utility may perform vegetation management within the utility
113 protection zone, as necessary, to secure the reliability of utility
114 services. [by protecting overhead wires, poles, conductors or other
115 utility infrastructure from trees and shrubs, parts of trees and shrubs
116 or other vegetation located within the utility protection zone.]

117 (c) (1) In conducting vegetation management, no utility shall prune
118 or remove any tree or shrub within the utility protection zone, or on or
119 overhanging any public road, public highway or public ground,
120 without delivering notice of the proposed vegetation management to
121 the abutting property owner or private property owner. Such notice
122 shall include the option for the abutting property owner or private
123 property owner to consent, in writing, to such proposed pruning or
124 removal, object to such proposed pruning or removal or modify such
125 proposed pruning or removal. The notice shall include instructions
126 regarding how the recipient may object in accordance with subdivision
127 (3) of this subsection. Such notice shall also include a statement that if a
128 person objects to the proposed pruning or removal, and such tree falls
129 on any utility infrastructure, such person shall not be billed by the
130 utility for any resulting damage. If requested by an owner of private
131 property, the utility, municipality or the Commissioner of
132 Transportation, as appropriate, shall provide such owner with
133 information regarding whether a tree or shrub to be pruned or
134 removed is in the public right-of-way or whether such tree or shrub is
135 on such owner's private property.

136 (2) Notice shall be considered delivered when it is (A) mailed to the
137 abutting property owner or private property owner via first class mail,
138 electronic mail or text message, (B) delivered, in writing, at the location
139 of the abutting property or private property owner, or (C)
140 simultaneously conveyed verbally and provided in writing to the
141 abutting property owner or private property owner. A utility shall
142 deliver such notice to the abutting property owner [if (i) pursuant to
143 subparagraph (A) or (B) of this subdivision,] or private property owner
144 at least fifteen business days before the starting date of any such
145 pruning or removal. [and (ii) pursuant to subparagraph (C) of this

146 subdivision, at any time before any such pruning or removal, provided
147 no utility may start such pruning or removal unless (I) the objection
148 period pursuant to subdivision (2) of this subsection has been met, or
149 (II) such property owner affirmatively waives, in writing, the right to
150 object.]

151 [(2)] (3) The notice shall indicate that (A) objection to pruning or
152 removal shall be filed, in writing, with the utility and either the tree
153 warden of the municipality or the Commissioner of Transportation, as
154 appropriate, not later than ten business days after delivery of the
155 notice, and (B) the objection may include a request for consultation
156 with the tree warden or the Commissioner of Transportation, as
157 appropriate. For purposes of this section, an abutting property owner
158 may file an objection or request for modification by (i) sending a
159 written objection or request for modification to the utility or tree
160 warden at the address for each specified on the notice, provided if the
161 written objection is mailed, it shall be deemed received on the date it is
162 postmarked, or (ii) sending by electronic mail an objection or request
163 for modification to the dedicated electronic mail address maintained
164 by the utility as specified on the notice.

165 (4) The utility shall not prune or remove any tree or shrub that is
166 outside of the public right-of-way unless it receives written affirmative
167 consent from the private property owner to whom notice is required in
168 accordance with subdivision (2) of this subsection.

169 [(3)] (5) If no objection is filed by the abutting property owner in
170 accordance with subdivision [(2)] (3) of this subsection, the utility may
171 prune or remove the trees or shrubs for which notice of pruning or
172 removal has been delivered, provided the utility has also received a
173 permit as required by subsection (f) of section 23-65, as amended by
174 this act. Nothing in this chapter shall be construed to limit the power
175 and authority of a tree warden as set forth in subsection (f) of section
176 23-65.

177 [(4)] (6) If the abutting property owner files an objection or request

178 for modification pursuant to subdivision [(2)] (3) of this subsection, or
179 if the utility does not accept the modification to the original notice, as
180 described in subdivision (1) of this subsection, the tree warden of the
181 municipality or the Commissioner of Transportation, as appropriate,
182 shall issue a written decision as to the disposition of the tree or shrub
183 not later than ten business days after the filing date of such objection.
184 This decision shall not be issued before a consultation with the
185 abutting property owner if such a consultation has been requested. The
186 abutting property owner or the utility may appeal the tree warden's
187 decision to the Public Utilities Regulatory Authority within ten
188 business days after the tree warden's decision. [The]

189 (A) Prior to the final decision in the docket described in subsection
190 (c) of section 16-32h, as amended by this act, the authority shall hold a
191 hearing within sixty [business] calendar days of receipt of the abutting
192 property owner's or utility's written appeal of the tree warden's
193 decision and shall provide notice of such hearing to the abutting
194 property owner, the tree warden or the Commissioner of
195 Transportation, as appropriate, and the utility. The authority may
196 authorize the pruning or removal of any tree or shrub whose pruning
197 or removal has been at issue in the hearing if it finds that public
198 convenience and necessity [require] requires such action. The burden
199 of proving that public convenience and necessity requires such action
200 shall be on the utility.

201 (B) On and after the effective date of the final decision issued in the
202 docket described in subsection (c) of section 16-32h, as amended by
203 this act, the entity designated by the authority, as determined by such
204 docket, shall hold a mediation session not later than thirty calendar
205 days after receipt of the abutting property owner's or utility's appeal of
206 the tree warden's or the Commissioner of Transportation's decision
207 and shall provide notice of such mediation session to the abutting
208 property owner, the tree warden or the Commissioner of
209 Transportation, as appropriate, and the utility, provided the abutting
210 property owner may opt not to utilize such mediation session and
211 proceed to the hearing described in this subparagraph. In the event

212 that the appeal is not settled by mediation, or the abutting owner elects
213 not to use such mediation session, the authority shall hold a hearing
214 not later than thirty calendar days after the conclusion of the
215 mediation session, or within sixty calendar days of the receipt of the
216 abutting property owner's written appeal if there is no mediation
217 session, and shall provide notice of such hearing to the abutting
218 property owner, the tree warden, or the Commissioner of
219 Transportation, as appropriate, and the utility. The authority may
220 authorize the pruning, removal or stump grinding of any tree or shrub
221 whose pruning or removal has been at issue in the hearing if it finds
222 that public convenience and necessity requires such action. The burden
223 of proving that public convenience and necessity requires such action
224 shall be on the utility.

225 [(5)] (7) When an objection or request for modification has been filed
226 pursuant to subdivision [(2)] (3) of this subsection, no tree or shrub
227 subject to the objection or request for modification shall be pruned or
228 removed until a final decision has been reached pursuant to
229 subdivision [(4)] (6) of this subsection.

230 (d) [No utility shall be required to provide notice pursuant to
231 subsection] Subsection (c) of this section shall not apply if the tree
232 warden of the municipality or the Commissioner of Transportation, as
233 appropriate, authorizes, in writing, pruning or removal by the utility
234 of a hazardous tree within the utility protection zone or on or
235 overhanging any public highway or public ground. If the hazardous
236 tree is outside of the public right-of-way, the utility shall make a
237 reasonable effort to notify the property owner of the proposed pruning
238 or removal at least three days prior to performing such pruning or
239 removal. Nothing in this subsection shall be construed to require a
240 utility to prune or remove a tree.

241 (e) No utility shall be required to obtain a permit pursuant to
242 subsection (f) of section 23-65 or provide notice under subsection (c) of
243 this section to prune or remove a tree, as necessary, if any part of a tree
244 is in direct contact with an energized electrical conductor or has visible

245 signs of burning. Nothing in this subsection shall be construed to
246 require a utility to prune or remove a tree.

247 (f) No utility shall exercise any powers which may have been
248 conferred upon it to change the location of, or to erect or place, wires,
249 conductors, fixtures, structures or apparatus of any kind over, on or
250 under any public road, public highway or public ground, without the
251 consent of the adjoining proprietors or, if such company is unable to
252 obtain such consent, without the approval of the Public Utilities
253 Regulatory Authority, which shall be given only after a hearing upon
254 notice to such proprietors. The authority may, if it finds that public
255 convenience and necessity require, authorize the changing of the
256 location of, or the erection or placing of, such wires, conductors,
257 fixtures, structures or apparatus over, on or under such public road or
258 highway or public ground.

259 (g) Each utility shall operate an electronic mail account to receive
260 objections, requests for modification, inquiries or complaints pursuant
261 to subsections (a) to (f), inclusive, of this section.

262 Sec. 4. Subsection (f) of section 23-65 of the general statutes is
263 repealed and the following is substituted in lieu thereof (*Effective from*
264 *passage*):

265 (f) Any person, firm or corporation, other than a tree warden or his
266 deputy, who desires the cutting or removal, in whole or in part, of any
267 tree or shrub or part thereof within the limits of any public road or
268 grounds, may apply in writing to the town tree warden, the borough
269 tree warden or the Commissioner of Transportation or other authority
270 having jurisdiction thereof for a permit so to do. Upon receipt of such
271 permit, but not before, [he] the applicant may proceed with such
272 cutting or removal, provided doing so is also consistent with section
273 16-234, as amended by this act, if applicable. Before granting or
274 denying such permit, such authority may hold a public hearing as
275 provided in section 23-59. [, and when] When the applicant is a public
276 utility corporation, the party aggrieved by such decision may, within

277 ten days, appeal therefrom to the Public Utilities Regulatory Authority,
 278 which shall have the power to review, confirm, change or set aside the
 279 decision appealed from and its decision shall be final. The burden of
 280 proving that public convenience and necessity requires the proposed
 281 cutting or removal shall be on the utility. This appeals process shall be
 282 in addition to the powers granted to [it] the Public Utilities Regulatory
 283 Authority under section 16-234, provided, if an application for such
 284 permit has been made to either a tree warden or the Commissioner of
 285 Transportation or other authority and denied by him, an application
 286 for a permit for the same relief shall not be made to any other such
 287 authority. Upon any approval of such a permit by the Commissioner
 288 of Transportation, he shall notify the tree warden for the town in
 289 which the tree is located. Upon any approval of such a permit by the
 290 Commissioner of Transportation, the permittee shall notify the tree
 291 warden for the town in which the tree is located prior to cutting any
 292 such tree.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	16-32h(c)
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	16-234
Sec. 4	<i>from passage</i>	23-65(f)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 \$	FY 16 \$
Various State Agencies	All Funds - Potential Cost	See Below	See Below

Municipal Impact:

Municipalities	Effect	FY 15 \$	FY 16 \$
Various Municipalities	Potential Cost	See Below	See Below

Explanation

The bill allows utility companies to grind the stumps of certain trees within a utility protection zone. Reasonable costs associated with this process are allowed to be recovered through the utility company's next general rate case. This may result in increased rates for ratepayers, including the state and municipalities.

The bill also makes several changes to the process of vegetation management that has no fiscal impact.

House "A" strikes the underlying bill and results in the above identified fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5408 (as amended by House "A")******AN ACT CONCERNING TREE TRIMMING.*****SUMMARY:**

This bill makes several changes to the process telephone, telecommunications, and electric distribution companies ("utilities") must follow before conducting vegetation management (pruning or removing any trees or shrubs around their poles and wires). Among other things, it:

1. requires a utility to obtain written affirmative consent from a private property owner before conducting vegetation management on the owner's property;
2. expands the information a utility must include in its notice to a property owner about proposed vegetation management to include (a) instructions on how to object and (b) that a property owner may suggest modifications to the utility's proposal;
3. standardizes the deadlines to object to proposed vegetation management;
4. requires the pruning performed as part of a utility's vegetation management to be done in a manner that retains the pruned vegetation's structural integrity and health;
5. places the burden of proof on a utility if an abutting property owner objects to its proposed vegetation management and the case is appealed to the Public Utilities Regulatory Authority (PURA);

6. requires PURA to study, and eventually allow, parties to mediate their disputes over proposed vegetation management before PURA hears appeals over the disputes; and
7. requires each utility to operate an e-mail account to receive objections, modification requests, questions, and complaints about the vegetation management process.

*House Amendment "A" replaces the original bill (File 406), which among other things, eliminated the deadline for certain property owners to object to a utility's proposed vegetation management and required utilities to grind the stumps of any trees removed on private property.

EFFECTIVE DATE: Upon passage

NOTICE REQUIREMENTS

Subject to certain restrictions, current law generally allows utilities to conduct vegetation management anywhere in the "utility protection zone" (within eight feet of either side of their wires and anywhere vertically above or below them). It also requires them to notify any abutting property owners.

The bill extends the notice requirement to private property owners. It defines an abutting property owner as the owner of property abutting or adjacent to the portion of a public road, highway, or grounds, where the proposed vegetation management will occur. It defines a private property owner as the owner of property, including municipalities, where the proposed vegetation management will occur. The bill also allows the notice to be sent by e-mail or text message as an alternative to first class mail.

The bill requires a utility's notice to either type of property owner to inform them that he or she can, in writing, consent, object, or offer modifications to the utility's proposed vegetation management. It must also state that an owner who objects will not be billed for any damage caused by trees falling on any utility infrastructure. If requested by a

private property owner, the utility, municipality, or transportation commissioner, as appropriate, must inform the property owner if the proposed vegetation management is on his or her private property.

The notice must also include instructions on how the recipient can object. The bill allows abutting property owners to object or request a modification by sending a written or e-mailed objection or modification request to the utility or tree warden at the address for each specified in the notice. By law, unchanged by the bill, the notice must also indicate that a property owner (1) must file a written objection within 10 business days and (2) can request a consultation with the local tree warden or transportation commissioner, as appropriate.

Hazardous Trees

Current law does not require any notice for utilities to perform vegetation management on trees that endanger their infrastructure because they are dead, decayed, or structurally weak (“hazardous trees”). When such a tree is outside of the public right-of-way, the bill requires a utility to make a reasonable effort to notify the proposed vegetation management’s property owner at least three days in advance. (Rights-of-way typically include the land up to, and including, the sidewalk.)

DEADLINES TO OBJECT

Current law requires a utility conducting vegetation management to notify abutting property owners at least 15 business days before the scheduled vegetation management and give them at least 10 business days to object before proceeding. The notice can be (1) delivered by first class mail, (2) deposited at the property, or (3) delivered orally and in writing. Under the last option, the utility can proceed any time after giving the notice, as so long as the owner has (1) not filed a written objection within 10 business days or (2) waived the right to object in writing.

The bill requires all notices to be delivered at least 15 business days

before the scheduled vegetation management, regardless of how the notice is delivered. For vegetation management on private property, it requires the property owner's written affirmative consent before the utility can proceed (in such instances, the property owner can withhold consent and will not have to object in order to stop the vegetation management).

As under current law, the utility can proceed with vegetation management on a public road, highway, or grounds if it does not receive an objection from an abutting property owner within 10 business days after delivering the required notice. The bill specifies that if an abutting property owner sends a written objection, it must be deemed received on the date it is postmarked.

Permits

The bill also specifies that before proceeding, the utility must obtain a permit, as already required by law, from the local tree warden, transportation commissioner, or other authority with jurisdiction over cutting or removing trees or shrubs on public road or grounds. If the permit is denied and the utility appeals to PURA (as allowed by law), the bill requires the utility to prove that public convenience and necessity requires its proposed vegetation management.

OBJECTIONS, MEDIATION, AND APPEALS

By law, if an abutting property owner objects to a utility's proposed vegetation management, the objection is decided by the local tree warden or transportation commissioner, as appropriate. Either party can then appeal that decision to PURA. The bill requires the utility to prove that its proposed vegetation management is required for public convenience and necessity in such appeals. It also (1) extends the entire appeals process to instances when the utility does not accept a private property owner's proposed modifications as allowed under the bill's notice requirement and (2) requires PURA's hearing on the appeal to be held within 60 calendar days, instead of 60 business days.

Mediation

The bill requires PURA to study, as part of a previously required proceeding, (1) using mediation to resolve objections to proposed vegetation management and (2) the circumstances under which stump grinding can be performed within the utility protection zone. Utilities must be able to recover all reasonable incremental costs incurred from any resulting PURA directives through the non-bypassable federally mandated congestion charge (the FMCC charge on electric bills).

Once PURA issues its final decision on this study, the bill requires the parties in an appeal to have a mediation session with a PURA-designated mediator before PURA hears the appeal, unless the abutting property owner chooses to opt-out of the mediation. The mediator must (1) notify the parties and the deciding tree warden or transportation commissioner, as applicable, and (2) hold the mediation within 30 calendar days after one of the parties appeals to PURA.

If the abutting property owner elects not to undergo mediation, or the mediation fails to resolve the appeal, the same PURA hearing and decision process applies, although the bill allows PURA to additionally authorize stump grinding.

DEEP Vegetation Management Review

Within one year after PURA issues its final decision on utility company tree trimming practices, including the above mediation study, the bill requires DEEP to review each electric company's vegetation management practices and issue a report on them to the Energy Committee. Thereafter, DEEP must review these practice and issue a report to the Energy Committee every two years.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute

Yea 16 Nay 7 (03/18/2014)